IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3758 OF 1997

M.S.Rajamani (Colonel) ...Petitioner

vs.

Union of India & others. ...Respondents.

Mr.G.S.Hegde, for Petitioner.

Mr.Suresh Kumar, for Respondent no.1

Mr.T.C.Kaushik, for Respondents 2 to 7.

CORAM: A.P.SHAH & S.U.KAMDAR, JJ.

DATED: 21th September,2004

ORAL JUDGEMENT (PER S.U.KAMDAR,J)

1. By the present petition, the Petitioner is seeking that the interview held on 18.6.1997 be declared as void and of no legal effect and the employees who are appointed to the posts of Brigadier should not be permitted to continue to occupy the said posts. The petitioner has also prayed for writ of mandamus, seeking direction that the name of the

petitioner should be included as a successful

candidate in the interview held on 18.6.1997 and he should be included in the list of selected candidates for the post of Brigadier.

2. The case of the petitioner briefly stated is as under:-

. On 2.8.1964 the petitioner joined the Indian Army. In 1979, he was deputed to the office of D.R.D.O. for permanent secondment. Sometime in or about 12th/13th June,1996, the petitioner was called for an interview for promotion to the post of Brigadier. It is the case of the petitioner that he was not interviewed because according to the petitioner, the petitioner did not fit in batch criteria which was fixed for three years batches as zone of consideration.

3. On 18.6.1997, according to the petitioner, he was once against called for interview. The petitioner appeared for the interview. However, he was not selected and the name of the petitioner was included as a selected candidate in the list published on 13.6.1997. The petitioner therefore, filed a departmental representations on 3.7.1997.

However, since there was no response, the petitioner

filed the present petition. The respondents have filed their affidavit in reply and have denied that the petitioner is entitled to the aforesaid reliefs. According to the Respondents, the petitioner was called for interview in the year 1996, but he was not considered because against 11 vacancies there were 25 officers and before the number of the petitioner can come for interview, all the vacancies were filled in and therefore, the interview was conducted only upto 18 officers who were higher in rank to the petitioner. In so far as interview in the year 1997 was concerned, it is the case of the petitioner that the criteria for promotion is seniority cum merit and petitioner not found suitable, therefore, petitioner was not selected and consequently not appointed to the said post.

4. Learned Advocate for the petitioner has contended before us that the circular dated 11.12.1991 inter alia prescribes Zone for consideration for the purpose of promotion on the post of Brigadier. According to the petitioner, to be in zone of consideration a candidate must belong to one of the three year batches which are fixed by

taking into consideration number of posts and available candidates as per their seniority. The

petitioner contends that for the purpose of appointment in the year 1997 candidates only from three years batches i.e. 1965, 1966 and 1967 should have been considered. It is the case of the petitioner that the respondent have considered the other officers who are junior to the petitioner and out of aforesaid three batches, i.e. the batches of year 1968 onwards. According to the petitioner, since candidates outside the zone of consideration were interviewed the entire selection process has been vitiated and consequently, the same is required to be set aside. It is further the case of the petitioner that in 1996 he was not called because he was not falling within three years batch as required in the Circular dated 11.12.1991. It is therefore, his contention that the petitioner's case ought to have been considered and in the Zone of consideration there could not be any other officer except the aforesaid three years relevant batch.

5. We have perused the said circular dated 11.12.1991. We do not find from the said circular that the same is applicable for the purpose of

selection to the post of Brigadier. Learned Advocate for the petitioner has fairly conceded that the said circular in no way refers to selection of post of brigadier, it only speaks about sequence of posts.

The said circular inter alia provides for batch concept as under:-

"Batch concept:

4. Officers are considered for promotion to select ranks batchwise by the appropriate Selection Boards. A Batch for consideration for promotion to select ranks is defined as "all officers who reckon seniority in a particular calender year", It comprises the following categories of officers:-

(a) Officers commissioned from IMA in Jun and Dec. each year.

(b) Technical graduate officers commissioned from IMA who reckon seniority in the calender year, after grant of ante date seniority.

(c) Officers commissioned from

IMA, who reckon seniority in the calender year, after grant of ante date seniority on account of holding NCC 'C' and 'D' certificates.

(d) Short service officers commissioned from OTA and subsequently granted permanent commission, who reckon seniority in Mar and Aug each year, after adjustment of their seniority as per the existing rules.

(e) Officers who forfeit service seniority as a result of disciplinary awards and reckon fresh seniority on any date in the calender year.

(f) Officers passing promotion examinations late and reckoning seniority corresponding to the date on which they finally passed.

(g) Officers who reckon seniority in the calender year for any reasons other than those mentioned above.

5. Every officer is given three chances

for consideration for promotion. If an officer is not approved for promotion during the first consideration, he loses one year of seniority and slides into the batch of the next year. In the eventuality of his not being approved for promotion even in the second consideration, he loses one more year of seniority and slides further into the next batch. Thereafter, the officer is considered for promotion for the last time and if he is not approved even in the third chance, he is not given any further consideration and is regarded as a finally superseded officer. The illustration of a typical composition of a batch for consideration for promotion to the select ranks, is at Appx 'A'."

From the plain reading of the circular it is clear that it applies to the officer and does not apply to the Brigadier. As against this, the respondent has relied upon the Circular dated 2.2.1980 which specifically deals with the promotion to the post of brigadier. The said circular states that the

post of Brigadier has to be fulfilled on the basis of security cum merits. The relevant portion of the said circular reads as under:-

> "2. For promotion to fill the posts of Brigedier/equivalent Head of Esstts/Directorates and those in IAT and DIWS and any other posts so specified by Scientific Adviser from time to time, only those officers out of the permanently seconded ones who possess the necessary qualifications and experience may be considered.
>
> 3. All promotions will be made on the basis of merit-cum seniority. Officers may also be

interviewed by the Selection Board."

6. In the aforesaid circumstances, we are of the opinion that the contention raised by the Petitioner pertaining to zone of selection being only three years batch for the post of Brigadier, is not correct, and does not have any merit whatsoever. The

said circular does not apply to the promotion for the post of Brigadier. The circular which is applicable is dated 2.2.1980. The said circular prescribed for promotion on the basis of seniority cum merit, thus obviously, the petitioner can have no grievance. The petitioner’s case was been considered in the year 1997. The petitioner participated in the interview and was found not suitable.

7. In so far as 1996 interview is concerned, the petitioner has not challenged the said action of the respondent of not interviewing him at all. The present petitioner in any event having appeared for an interview in the year 1997, was not entitled to challenge the same. Learned Advocate for respondents has placed reliance on the judgement of the Apex Court in the case of "Om prakash Shukla Vs. Akhilesh Kumar Shukla and others" reported in "1986 (Supp)

Supreme Court Cases 285" in which it has been held that once having participated in the process of interview for the purpose of promotion, the person is not entitled to challenge the procedure laid down for such interview. The relevant portion of the said judgement reads as under:-

> "24. Moreover, this is a case where the Petitioner in the writ petition should not have been

> granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the district of Kanpur also. They were not responsible for the conduct of the examination."

8. In the aforesaid circumstances, we find no merits in the petition and dismiss the same. However, there shall be no order as to costs.

(A.P.Shah, J.)

21.9.2004. (S.U.Kamdar, J)